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APR 27 2004

**In the United States Patent and Trademark Office**

Applicants: Dennis E. Everhart et al.  
Serial No.: 10/027,267  
Confirmation No: 3116  
Filed: December 21, 2001

Docket No.: 16,540  
Group: 3761  
Examiner: Jacqueline F. Stephens  
Date: April 27, 2004

**OFFICIAL**

For: Therapeutic Agent Delivery Labial Pad

**Response to Restriction Requirement Without Traverse**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the restriction requirement mailed April 5, 2004, the following remarks are submitted for your consideration.

Applicants respectfully **provisionally elect** under paragraph 1 the Species 2 and Subspecies 3 embodiment to be prosecuted by way of the present application. Pending further clarification, Applicants elect claims 3, 12, 16, 18-41, 43, 45-52, 54, 56-60, and 62-63 for prosecution in the present application if no generic claim is finally held allowable.

With respect to the first part of paragraph 2, it is unclear to Applicants whether the statements indicate a selection of species separate from that in paragraph 1, in the alternative to paragraph 1, or how these could be species distinct from those stated in paragraph 1. Applicants contend that these might be more accurately described as subspecies of the previous species election. The difficulty lies in the fact that a claim generic to these "species" may be different from a claim generic to the species of paragraph 1. In the interests of moving this case forward, Applicants respectfully **provisionally elect** under paragraph 2 the subspecies described in claim 22 to be prosecuted by way of the present application. Pending further clarification, Applicants amend the claim list presented above and elect claims 3, 12, 16, 18-22, 33-41, 43, 45-52, 54, 56-60, and 62-63 for prosecution in the present application if no generic claim is finally held allowable.

With respect to the second part of paragraph 2, it is unclear to Applicants whether the statements indicate a selection of species separate from that in paragraph 1, in the alternative to paragraph 1, or how these could be species distinct from those stated in paragraph 1. Applicants contend that these might be more accurately described as subspecies of the previous species election. The difficulty lies in the fact that a claim generic to these "species" may be different from a claim generic to the species of

paragraph 1. Again, in the interests of moving this case forward, Applicants respectfully **provisionally elect** under paragraph 2 the "method" described in claim 59 to be prosecuted by way of the present application. Pending further clarification, Applicants amend the claim list presented above and elect claims 3, 12, 16, 18, 21-22, 33-41, 43, 45, 47-52, 54, 59, and 62-63 for prosecution in the present application if no generic claim is finally held allowable. Applicants reserve the right to re-elect species if clarification of species v. subspecies affects the classification of Applicants' claims.

This election is made **without traverse** with respect to the species presented or alluded to by the Examiner. Applicants specifically reserve the right to seek patent protection for non-elected subject matter by divisional application, or by prosecution in the present application upon allowance of a generic claim.

The undersigned may be reached at: 920-721-8863.

Respectfully submitted,

DENNIS S. EVERHART ET AL.

By: 

Randall W. Fieldhack

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#### CERTIFICATE OF FACSIMILE TRANSMISSION

I, Mary L. Roberts, hereby certify that on April 27, 2004 this document is being sent by facsimile transmission addressed to the Commissioner for Patents, Alexandria, VA via facsimile number (703) 872-9306.

By: \_\_\_\_\_

Mary L. Roberts